



Rural Development

Operations and
Management

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January 12, 2015

TO: State Directors

ATTN: Business Program Directors
Civil Rights Managers/Coordinators

FROM: Angilla Denton /s/ Angilla Denton
Director, Civil Rights

SUBJECT: Conducting Compliance Reviews under Rural Energy for America
Program (REAP)

PURPOSE/INTENDED OUTCOME:

This Administrative Notice (AN) is being issued to provide guidance to Rural Development (RD) staff with regard to conducting compliance reviews of loan and grant recipients in relation to projects financed under REAP.

COMPARISON WITH PREVIOUS AN:

There have been no previous ANs on this subject.

IMPLEMENTATION RESPONSIBILITIES:

Rural Development administers three types of programs: federally conducted, federally assisted, and federally guaranteed programs..

Federally conducted programs are those programs, services, benefits, resources or information delivered directly to the public. Federally assisted programs mean programs where a primary recipient is authorized or required to extend Federal financial assistance to another recipient or beneficiary for the purpose of carrying out a program. Federally guaranteed programs are loans that are made, held and serviced by private industry lenders which are guaranteed by Federal Agencies.

RD's Rural Energy for America Program (REAP) has guaranteed, conducted, and assisted activities.

Assisted Programs

Assisted programs are those programs that extend federal financial assistance to a recipient (borrower or grantee. i.e. REAP Energy Audit and Renewable Energy Development Assistance). The recipient becomes responsible for complying with

EXPIRATION DATE:
January 31, 2016

FILING INSTRUCTIONS
Preceding RD Instructions 1901-E

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

civil rights laws in the administration of their programs and activities because there is an ultimate beneficiary that receives the benefit of this assistance (i.e., tenant, water user, hospital patient)

Conducted Programs

Agency extends the federal financial assistance directly to the ultimate beneficiary, or borrower. (i.e., single family Housing, REAP [see chart below for examples]) Note: Title VI and 7 CFR 15b do not apply because the funds are not being distributed through a recipient and to an ultimate beneficiary.

Guaranteed Loan Programs

Are loans that are made, held and serviced by private industry lenders. Participating lenders are approved by RD and are issued a loan note guarantee on loans approved by RD (see chart below for an example).

For conducted programs, compliance reviews are audits of the practices of USDA personnel in providing nondiscriminatory service to all persons. No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or gender identity, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

For assisted programs, compliance reviews are audits of the practices of recipients in providing nondiscriminatory service or benefits to a beneficiary, applicant or participant. Rural Development, through pre-award and post-award compliance reviews, is responsible for ensuring that recipients of federal funding adhere to nondiscrimination laws and Executive Orders. These laws include, but are not limited to, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, the Civil Rights Restoration Act of 1987, the Fair Housing Act, the Equal Credit Opportunity Act (ECOA), and Executive Order 13166, Limited English Proficiency.

For guaranteed loan programs, compliance reviews are usually not required because, **under Title VI, contracts of guarantee and insurance are not considered Federal financial assistance.** However, the general rule does not apply if interest credit subsidies are included in the guarantee. If USDA provides interest credit, Section 504 of the Rehabilitation Act of 1973 must be followed and compliance reviews must be conducted on the guaranteed lender.

Under Title VI of the Civil Rights Act of 1964, *recipient* is defined as any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee. **However, it does not include any ultimate beneficiary under any such program.** Typically, in assisted and guaranteed programs, the *ultimate beneficiary* does not receive a “distribution” of federal money. Rather, he or she enjoys the benefits of enrollment in the program.

Compliance review requirements are therefore to be determined based upon the definition of recipient, ultimate beneficiary, and the distribution of the federal money. The REAP program has

features that incorporate aspects of conducted, assisted, and guaranteed programs. Below is a chart that further clarifies compliance requirements for REAP.

Recipient	Assistance	Funding	Program Type	Compliance Review
Farmer (Ultimate Beneficiary)	Solar panels, grain dryer	Grant	Conducted	The Agency may periodically review the program activities of USDA personnel in accordance with DM4330-001 (see especially the section concerning record examinations on pdf p.78 of the DM). The Agency will not review the activities of the farmer.
Convenience Store Owner (Ultimate Beneficiary)	Replace refrigeration units, ovens or install solar panels on the convenience store.	Grant	Conducted	The Agency may periodically review the program activities of USDA personnel. The Agency will not review the activities of the convenience store owner.
Convenience Store Owner (Ultimate Beneficiary)	Restroom lighting, insulation, new windows	Grant	Conducted	The Agency may periodically review the program activities of USDA personnel. The Agency will not review the activities of the convenience store owner.
Rural Electric Co-op, University, State Energy Office	Funds to conduct Energy Audits	Grant	Assisted	The Agency must conduct pre-award, and/or post-award compliance reviews of the Rural Electric Cooperative, University, or State Energy Office.
Rural Small Business	\$5,000,000,000 for a 3 megawatt solar farm	Loan	Guaranteed	The Agency will not conduct compliance reviews of the borrower. If the guaranteed lender receives interest assistance, overhead assistance, or other subsidies from RD, then the Agency must perform compliance reviews of the lender in accordance with 7 C.F.R 1901 E, Section 1901.204.

Compliance reviews for assisted programs will be documented on Form 400-8, utilizing the following schedule for completion.

- (1) Initial compliance reviews will be conducted by the Agency prior to funds being obligated.
- (2) Grants will require one subsequent compliance review following project completion. This will occur after the last disbursement of grant funds has been made.

The maintenance of data on the race, sex, and national origin (RSNO data) of the recipient is an essential component to evaluating participation in all Rural Development programs. This data must be collected at the application phase. Additionally, the recipient under Title VI is responsible for the collection and maintenance of RSNO data of its membership/ownership, boards, employees, and beneficiaries. This information must be available to conduct compliance reviews in accordance with 7 CFR 1901.204.

If you have any questions, please contact Sharese Paylor, Program Compliance Branch Chief Sharese.paylor@wdc.usda.gov at (202) 692-0097 or by fax at (202) 692-0305.